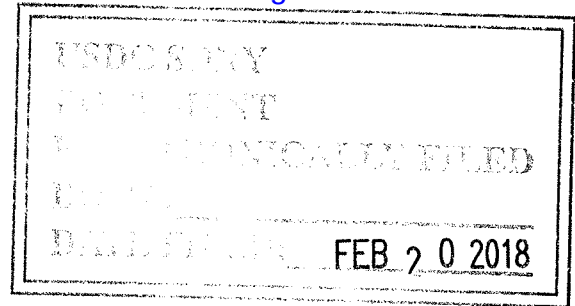


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



Suzanna Bowling,

Plaintiff,

—v—

Johnson & Johnson, et al.,

Defendants.

17-cv-3982 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

On May 25, 2017, Plaintiff Suzanna Bowling filed this putative class action alleging that Benecol Spread and Benecol Light Spread, manufactured by Defendants, were falsely and misleadingly labeled as containing no trans fat and no trans fatty acid. Dkt. No. 1. On July 1, 2017, Defendants filed a motion to dismiss or, in the alternative, to strike the nationwide class allegations in the complaint. Dkt. No. 11.

Defendants' memorandum in support of their motion to dismiss cites a regulation—21 C.F.R. § 101.9(c)(2)(ii)—that is no longer in effect. The current version of 21 C.F.R. § 101.9 does not contain any subsections under 21 C.F.R. § 101.9(c)(2). Plaintiff appears to cite the current version of 21 C.F.R. § 101.9(c)(2). Dkt. No. 19 at 9. Both parties analyze cases that addressed the same preemption question at issue here, and those cases involved the earlier version of the regulation, 21 C.F.R. § 101.9(c)(2)(ii).

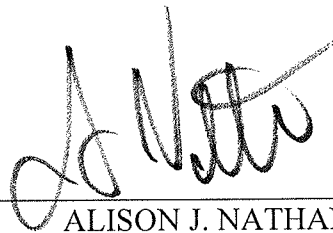
In addition, the complaint refers to a “class period,” but does not specify what that period is, though Defendants mention that the statements at issue were removed from packages in 2011 and that Defendants divested the Benecol brand in 2015. Dkt. No. 12 at 1 n.1.

Accordingly, each party shall submit a supplemental brief of no more than five pages

within three days of date of this Order explaining which version of 21 C.F.R. § 101.9 is at issue in this case.

SO ORDERED.

Dated: February ²⁰_____, 2018
New York, New York

A handwritten signature in black ink, appearing to read 'Alison J. Nathan', written over a horizontal line.

ALISON J. NATHAN
United States District Judge